ANNUAL REPORT

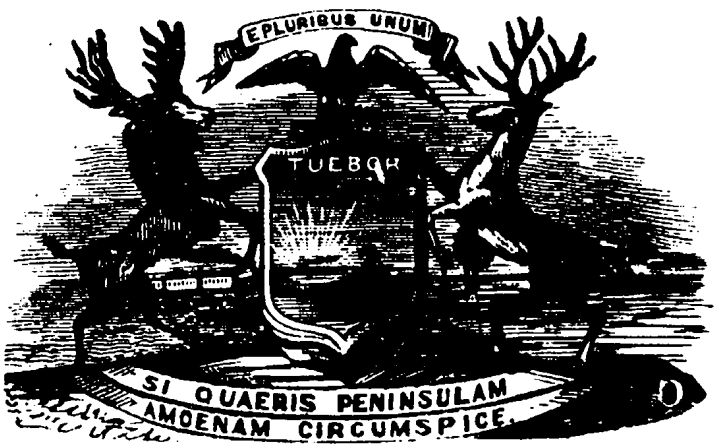
OF THE

ATTORNEY GENERAL

OF THE

STATE OF MICHIGAN,

FOR THE YEAR 1848.



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1848.

REPORT.

To the Legislature of the State of Michigan:

ATTORNEY GENERAL'S OFFICE,
January 1st, 1849.

The undersigned respectfully submits to the Legislature the following report:

Since the undersigned entered upon the duties of his office, on the fourth day of April last, there have been but two causes heard in the Supreme Court, in which the people of the State were a party.

The first was the case of the People *vs.* Richards and Pelton, on a case reserved on a motion in arrest of judgment in the Hillsdale Circuit Court, where the defendants were convicted of conspiracy. The other was the case of the People *vs.* Gorham, on *certiorari*, to a court of special sessions for Washtenaw county. Both cases were argued at the July term of the Supreme Court, but are believed not to be decided.

Under an act number 81, page 130, of the laws of 1842, the acting agent of the State Prison at Jackson, entered into a contract with Henry B. Lathrop, Esq., of Jackson, leasing to him the labor of a certain number of convicts. The convicts were subsequently taken away from Mr. Lathrop by the Agent, under the advice of the Inspectors of the State Prison. It was believed by the Agent: 1st, that the whole contract was invalid from the beginning; 2d, that Mr. Lathrop had forfeited it by non-fulfillment on his part. Mr. Lathrop brought an action against the State Prison Agent for an alleged breach of contract, and claimed very heavy damages for the loss of the unexpired term of the contract. While this suit was pend-

ing. Mr. Lathrop applied to the Legislature for relief, and under a joint resolution approved January 14, 1848, the claim was submitted to the award of the Board of State Auditors. An award was made, but Mr. Lathrop not being satisfied therewith, resumed the prosecution of his suit. The cause came on for trial in November last, and the undersigned at the request of the counsel for the State Prison Agent, attended and assisted in the defense. The award of the Board of State Auditors, which was relied on in the defense of the suit, was held by the court to be bad, and the plaintiff recovered a verdict of about $5,700 damages.

It is not necessary to give a history of the case in this place, but there are several very important points of law involved in it, on which it is believed a judgment can be reversed. Measures have been taken to remove the cause by writ of error, to the Supreme Court.

The Land Board, under the "joint resolution to the claims of Cyrus Dana, Rodney C. Payne, and Job Brookfield for relief," approved March 5th, 1847, having decided that said Brookfield was not equitably entitled to the land therein mentioned, I have under the direction of said Board, caused a *scire facias* to be filed in the Supreme Court, for the vacation of the patent heretofore granted by the State to said Brookfield.

Under the direction and advice of the Governor, Auditor General, and State Treasurer, proposals were received in the month of June last, at this office, for the purchase from the State of its mortgage upon the Detroit & Pontiac Railroad. The highest offer was thirty-two thousand dollars, made by Alfred Williams, payable fifteen thousand dollars in cash, and seventeen thousand dollars in recognized State indebtedness. After a very full and careful consideration it was unanimously decided that it was for the interest of the State that the offer should be accepted. I am happy to say that the whole sum has been paid into the treasury; and the undersigned, under

the direction of the Governor, has executed an assignment of said mortgage according to the terms of joint resolution number 45, of the laws of 1848.

Besides his usual duties as the law adviser of the other departments, the undersigned has found that numerous calls were made upon him for the same service by county and town officers. Though not generally required by law to do so, yet the undersigned has thought proper in all cases, when asked, to give official opinions to county and town officers relative to their ministerial duties. This however, imposes upon the office duties not belonging to it, and which are somewhat onerous.

I transmit herewith abstracts of all the reports of the Prosecuting Attornies of the several counties that have been received at this office for the past year. I regret to say that there is no uniformity in these reports, and it is hardly possible to deduce from them those results which it seems to me the law contemplates shall be embraced in the abstracts required to be laid before you each year. So far as has been possible, I have given the name of each person prosecuted, the mode of prosecution, the offense charged, if tried, whether a conviction or acquittal was the result; and if a conviction, the punishment. If this could be made complete it would present an epitome of the whole criminal proceedings in the State for each year. But it is hardly possible to attain this end unless this office shall be authorized to prepare and distribute blanks to be filled up by the several Prosecuting Attorneys.

The Prosecuting Attorney of St. Joseph county has called my attention to the fact that it was decided at the last July term of our Supreme Court, that a person found in this State with property which he has stolen in a sister State is not punishable under our laws. The same defect once existed in New York, but was cured by statutory enactment (2 N. Y. R. S., 698). It seems to me worthy of attention, whether provision should not

be made in such cases for the punishment of the thief, his abettors, and any receivers of the stolen goods.

Instead of making an abstract of the report of the Prosecuting Attorney for the county of Wayne, I deem it proper to give it in full. It appears to me to contain matters which deserve attention. I especially solicit attention to exhibit C, of that report. I also refer the Legislature to the remarks about the time of calling the petit jury, as at present established by law.

The Detroit & Pontiac Railroad Company have declined to pay the specific State tax required by chapter 21 of the revised statutes, page 121, as they contend that they are not liable under their charter. The company however, profess a perfect willingness to pay the tax if it shall be judiciously decided that they are subject to it; and it is now arranged that an amicable suit shall be brought to test the question.

All of which is respectfully submitted,

GEORGE V. N. LOTHROP,

Attorney General.